IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 179 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

AHMEDABAD NEW COTTON MILLS COMPANY LIMITED

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Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 23/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "B" has referred the

following questions of law for the opinion of this Court in respect of assessment years 1981-82 and 1982-83 :-

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that medical benefits and personal accident insurance premia pertaining to Managing Directors are not to be included while calculating the quantum for the purpose of section 40(c) of the Income-tax Act, 1961 ?

3. Whether, the Appellate Tribunal is right in law and on facts in holding that an expenditure of Rs.61,333/- incurred in connection with the issue of bonus shares was not disallowable ?

2. The assessee Company included commission and insurance premium on personal accident policy as salary and perquisite and claimed allowance under section 40(c)(i) of the Act. The assessee had not included medical benefits of Rs.4,435/- and Rs.2,739/- in the cases of two Directors i.e. Bipinbhai and Smt. Jyotsnaben as perquisites. Moreover, the assessee had claimed Rs.61,334/- as expenses incurred for issue of bonus shares for assessment year 1981-82. The ITO included the amount of medical benefits and personal accident premium for the purposes of section 40(c)(i). The ITO also did not accept the claim of Rs.61,334/- as expenses incurred for issue of bonus shares. On appeal, the Commissioner of Income-tax (Appeals) in so far as claim on account of medical benefits and personal accident insurance premium pertaining to Managing Directors was concerned, held that the same could not have been added. In respect of expenditure on issue of bonus shares, the Commissioner of Income-tax (Appeals) held that the expenditure was not allowable as revenue expenditure. The Tribunal, in appeal by revenue and the cross objections by the assessee, held that deletion on account of medical benefits, personal accident insurance premia pertaining to Managing Directors while calculating the quantum for the purpose of section 40(c) of the Income Tax Act was justified. As far as the disallowance of expenditure of Rs.61,334/- in connection with the issue of bonus shares is concerned, the Tribunal found from the details of expenditure that the expenditure was in connection with the printing of share certificates, coupons, letters, necessary registers printed by IBM and postage, all aggregating to Rs.39,333/- whereas the

balance amount of Rs.22,000/- was in respect of stamp expenses and, therefore, allowable as business expenditure. On reference application being submitted by the revenue, the Tribunal has referred the above quoted questions of law for our opinion.

3. The learned counsel for the revenue states at the Bar that the controversies raised in the present reference are concluded by the decisions of this Court rendered in (i) Gujarat Steel Tubes Ltd. vs. CIT, (1994) 210 ITR 358, (ii) Ambica Mills Ltd. vs. CIT, (1998) 210 ITR 583 and (iii) Ambica Mills Ltd. vs. CIT, (1999) 235 ITR 264. In the above referred to decisions, it has been held that reimbursement of medical expenses incurred by the directors is a benefit to a director within the meaning of section 40(c)(i) of the Income-tax Act, 1961 and is not an allowable expenditure. Further it is held that if a Company has, by taking out a policy of insurance for the directors against personal accidents sought in fact to insure itself in respect of the liability that may arise towards the directors as a result of accident, then that situation would be different from a director himself taking out a personal accident insurance under which he would be obliged to pay the premium himself and not the Company and, therefore, reimbursement of premium is not a benefit to the director and is an allowable expenditure. Moreover, in Gujarat Steel Tubes Ltd. (Supra), the Division Bench of this Court has held that expenditure on issue of bonus shares is a capital expenditure and not a revenue expenditure for the purposes of Section 37 of the Income Tax Act, 1961.

4. Applying the principles laid down by this Court the above referred to decisions to the facts of the present case, we hold that reimbursement of medical expenses incurred by the director is a benefit to the director within the meaning of Section 40(c)(i) of the Act and is not an allowable expenditure but reimbursement of premium being not a benefit to the director is an allowable expenditure. Similarly, the expenditure of Rs.61,333/- incurred in connection with the issue of bonus shares is a capital expenditure and not business expenditure. Thus question No. 1 is answered in favour of the revenue in so far as the medical benefits is concerned and in favour of the assessee in so far as the personal accident insurance premia is concerned. Question No. 3 is answered in favour of the revenue and against the assessee.

The reference accordingly stands disposed with no

order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-